IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 915 of 2006

Date of decision: 13.9.2007

Ved Parkash ... Petitioner

Versus

State of H.P. & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1]

For the Petitioner: Ms. Jyotsna Rewal Dua, Advocate.

For the respondents: Mr. M.S. Chandel, Advocate General with Mr. Ashutosh Buratoki, Addl. A.G. for respondents No. 1 & 2.
Mr. Ajay Mohan Goel, Advocate, for respondent No. 3.

Per V.K. Ahuja, J.:

This judgment shall dispose of the writ petition filed by the petitioner under Articles 226/227 of the Constitution of India against the order passed by the learned H.P. State Administrative Tribunal on 28.8.2006.

Briefly stated the facts of the case are that the post of Panchayat Sahayak was to be filled up in Gram Panchayat Kanti Mashwa, Tehsil Paonta Sahib, District Sirmour, H.P. It was alleged that the Pradhan Gram Panchayat by forging signatures of one of the Panchayat members passed a resolution straightway appointing respondent No. 3 as Panchayat Sahayak. The post was neither advertised nor interviews were held. According to the rules framed

[1]Whether reporters of Local Papers may be allowed to see the judgment?

under H.P. Panchayati Raj Act, every such resolution has to be approved by the higher authorities i.e. Block Development Officer. The resolution was not sent for approval by the Pradhan/Gram Panchayat concerned. On a complaint, the Deputy Commissioner vide his letter dated 17.6.2000 cancelled the resolution and directed the Gram Panchayat to hold fresh interviews for the post of Panchayat Sahayak in presence of Block Development Officer after due publicity of the same. The post of Panchayat Sahayak was advertised and fresh interviews were held on 22.9.2000. 12 candidates including respondent No. 3 appeared and participated for the post of Panchayat Sahayak. By way of majority decision, a resolution was passed selecting petitioner as Panchayat Sahayak. The petitioner was issued appointment letter which was duly approved by the concerned authority. He gave his joining report on 23.9.2000 and has been working as such since then.

It was further alleged that after three months of the joining of the petitioner as Panchayat Sahayak, respondent No. 3 filed an Original Application before the State Administrative Tribunal. The petitioner was impleaded as a party respondent No. 3 but no relief was claimed directly against him. Repsondent No. 3 never disclosed in the said application filed before the Tribunal about his illegal selection by the Pradhan which was not approved by the authorities and he also concealed the factum of holding fresh interview and participation by him and that he had not been selected in the said interview. However, the learned Tribunal without taking reply from the petitioner allowed the application filed by respondent No. 3 and set aside the cancellation of the appointment of respondent No. 3 and status quo was directed to be maintained which existed immediately prior to cancellation of the appointment of the petitioner.

Being aggrieved by the said order passed by the State Administrative Tribunal, the petitioner has challenged the said order by way of present writ petition.

A notice of the writ petition was issued to the respondents who filed their reply.

We have heard the learned counsel for the parties.

During the course of arguments, learned counsel for respondent No. 3 had supported the order passed by the Tribunal on the ground that the learned State Administrative Tribunal had mainly considered the question as to whether any notice was issued to respondent No. 3 or not before canceling his appointment and this plea found favour with the learned Tribunal who allowed the application filed by respondent No. 3. Respondent No. 3 in his reply had pleaded that he had not concealed any material fact when he filed an Original Application before the Tribunal. In their reply filed by respondents No. 1 & 2, they have admitted that the name of respondent No. 3 was recommended for appointment as Panchayat Sahayak by the Pradhan without the sanction of respondent No. 2 and without following proper procedure and also pleaded that fictitious signatures had been obtained and a resolution was passed by the Panchayat accordingly and enquiry was got conducted by the Deputy Commissioner who directed holding of fresh interviews.

A perusal of the application under Section 19 of the Act filed by respondent No. 3 before the State Administrative Tribunal shows that he had never alleged that fresh interviews were held, he participated in the said interviews and the petitioner was appointed after the interviews on 22.9.2000. It is, therefore, clear that respondent No. 3 had concealed the material facts from the learned Tribunal when he

filed the application for release of his pay and that no show notice was issued to him before the order of cancellation of his appointment was passed. He alleged that the post was duly advertised since the notice was affixed at the Panchayat Ghar, but he never alleged that as to how many persons appeared in the interview, when these interviews were held and accordingly, it appears that the order was passed by the Pradhan Gram Panchayat appointing the petitioner as Panchayat Sahayak.

In the impugned order passed by the learned State Administrative Tribunal it was observed by the learned Tribunal that since the appointment of applicant was made by the Panchayat, therefore, cancellation of said appointment could have been assailed before the authority i.e. S.D.O.(Civil)/Deputy Commissioner as per the law and this has not been done. However, the learned State Administrative Tribunal observed that only for these reasons the Original Application cannot be treated as not entertainable. Thus, it is clear that respondent No. 3 had not availed the alternative remedy available to him on cancellation of his appointment, but filed the Original Application before the State Administrative Tribunal. The learned State Administrative mainly took up the view that he had not been given any show cause notice or opportunity of being heard, therefore, impugned order was in violation of principles of natural justice and, therefore, cannot be sustained. In our view, in view of the facts of the case when respondent No. 3 concealed the material facts about the fresh interview having been held and the fact that he had participated in the interview, he was not entitled to the relief claimed by him. Moreover, his appointment had been terminated by the Deputy Commissioner after enquiry and the main reasons given are that it was not in accordance

with the rules and once the appointment was void ab initio, there was no question of issuing of any show cause notice to respondent No. 3 before passing of the order by the Deputy Commissioner.

A perusal of the judgment of the learned Tribunal shows that they have simply mentioned that none was present on behalf of respondent No. 3, but in the present impugned order, no reference has been made to the reply filed by respondent No. 3 in which he has clearly alleged that fresh interviews were held and he was selected and he had joined as Panchayat Sahayak but no relief had been directly claimed against him, though the relief should have been claimed against him also. The learned counsel for the petitioner who was respondent No. 3 before the learned Tribunal has alleged that counsel for the petitioner was probably not present before the learned Tribunal on that date. However, reply filed by respondent No. 3/present petitioner should have been considered by the learned Tribunal which was not done and at this stage, it cannot be said that he was proceeded against ex parte or his presence was not marked wrongly or rightly. The facts of the case clearly show that the appointment of respondent No. 3 was illegal, he was aware of the setting aside of his appointment and holding of fresh interviews, but by concealment of the material facts, he obtained favourable order from the State Administrative Tribunal which order cannot be said to be legal and as such, impugned order passed by the learned State Administrative Tribunal is liable to be set aside and the same is accordingly set aside. Respondent No. 3 was not entitled to any benefit in regard to salary etc. since his appointment is void ab initio. The writ petition filed by the petitioner is accordingly allowed and the impugned order passed by the learned State Administrative Tribunal is set aside. However, we refrain from imposing any costs upon

respondent No. 3 in view of the facts of the case and accordingly there is no order as to costs.

CMP No. 1455 of 2007:

In view of the orders passed in the main petition, this application also stands disposed of.

(Deepak Gupta),
Judge

(V.K. Ahuja),
Judge

September 13, 2007
(BSS)